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9th CIRCUIT COURT OF APPEALS UPHOLDS CALIFORNIA'S TOBACCO EDUCATION MEDIA CAMPAIGN

SACRAMENTO - In a victory for California's successful tobacco education efforts, the 9th Circuit Court of Appeals today rejected an appeal by R.J. Reynolds and Lorillard that claimed certain anti-smoking ads violated their constitutional rights to free speech and to an impartial jury trial.

"This decision means California will continue a campaign that has been effective in helping to reduce smoking among both adults and teens," said State Health Director Sandra Shewry. "Censoring California's anti-tobacco ads would undermine the state's highest priority in public health - saving lives."

Today's ruling upheld a 2003 decision by Judge Lawrence Karlton of the U.S. District Court, Eastern District of California. The 9th Circuit Court of Appeals heard oral arguments in San Francisco on May 10, 2004.

In the lawsuit, the tobacco companies claimed that since the ads were funded through cigarette taxes, they were being forced to fund speech with which they did not agree, in violation of the First Amendment. The judges rejected the claim saying, "A mere link between an excise tax and a government-sponsored advertising campaign, absent a claim that either the tax or the advertising is unconstitutional, does not violate the First Amendment."

The judges also rejected the tobacco companies' claim that because the anti-smoking ads are critical of the tobacco industry, the companies are denied the right to a fair trial in court because the ads may bias a jury. The judges ruled that the Seventh Amendment guarantee of the right to a civil trial by jury does not apply to the states and that allegations of jury bias should be addressed in the court itself in which the alleged bias is being raised.

California's aggressive media campaign, combined with local smokefree efforts and policies, has been credited with helping the state achieve the second lowest adult smoking rate and one of the lowest teen smoking rates in the nation. In 2003, California's adult smoking prevalence was at an all time low of 16.2 percent, a decrease of about 29 percent since the passage of Proposition 99, when 22.8 percent of the adult population smoked. Smoking among youth in the 8th grade decreased from 11.7 percent in 2000 to 6.4 percent in 2002. Among 10th-grade students, smoking decreased from 19.5 percent in 2000 to 14.8 percent in 2002.

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